

**REMARKS**

Claims 13-18 and 20-29 are now pending in this application. Claims 1-21 are rejected. Claims 1-12 and 19 are previously cancelled. Claims 13, 14 and 20-29 are amended herein to clarify the invention and to address matters of form unrelated to substantive patentability issues

Applicants herein traverse and respectfully request reconsideration of the rejection of the claims and objection cited in the above-referenced Office Action.

Claims 22 and 23 are objected to based upon noted language informalities. The informalities are addressed in the manner suggested by the Examiner. Withdrawal of the objection is respectfully requested.

Claim 14 is rejected under 35 U.S.C. § 112, first paragraph, as not being enabled by the specification. Applicants herein respectfully traverse this rejection.

The determination of enablement turns on whether the specification contains a sufficient disclosure to enable one skilled in the art to practice the invention without the exercise of undue experimentation. What constitutes undue experimentation is determined using a standard of reasonableness. Factors to be considered include the quantity of experimentation necessary, the amount of direction or guidance presented, the existence of working examples, the state of the prior art, the nature of the invention, the predictability of the art and the breadth of the claims. *Ex parte Forman*, 203 U.S.P.Q. 546 (BPAI 1986).

The Examiner's attention is drawn to MPEP 2164.01, which clearly states that: "A patent need not teach, and **preferably omits**, what is well known in the art. *In re Buchner*, 929 F.2d 660, 661, 18 USPQ2d 1331, 1332 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986), *cert. denied*, 480 U.S. 947 (1987); and *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 1463, 221 USPQ 481, 489 (Fed. Cir. 1984)." (Emphasis added)

In the above regard, the Web page provided by applicants along with the previously filed amendment, was not for purposes of support or as supplemental disclosure, as alleged by the Examiner at page 10 of the Office Action in the Response to Arguments, but rather to underscore the already well know nature of wild yeast inoculation from ambient air.

Because of the notoriously well know nature of such wild yeast inoculation practice for pre-dough preparation, applicants have correctly followed case rulings which suggest that applicants preferably omit what is well known in the art from the disclosure. Applicants, therefore, respectfully submit that one skilled in the art of inoculation of dough with yeast would readily be able to implement the present invention without undue experimentation based on a reading of the specification as filed. Therefore, reconsideration of the rejection of claim 14 is earnestly solicited.

Claims 13-18 and 20-29 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Applicants respectfully

traverses this rejection. The Examiner's attention is drawn to the last full paragraph on page 3 of the originally filed PCT specification (paragraph [0013] of the published application), which clearly states that "[i]n this way, a product temperature of about 0 to 4° C. is achieved within three days [i.e., 72 hours]," thus providing full support for the claimed subject matter of claim 13.

Claims 14, 20 and 29 are rejected as indefinite under 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter of the invention as a result of informalities stated in the Office Action. The claims are amended to remove or correct the informalities noted in the Office Action. Therefore, reconsideration of the rejection of claims 14, 20 and 29 and their allowance are earnestly requested.

Before discussing the substantive art rejections in detail below, a brief recitation of the invention would appear in order so as to highlight the features thereof, as distinguished over the cited art of record.

The invention is directed to manufacture of a pre-dough (sponge) for mixing with a (final) bread dough, but which process, quite the opposite from the disclosures of the cited art, is fully separated from such a bread manufacturing process. The inventive pre-dough can be stored over a month prior to be used for final dough preparation. As disclosed on page 3 in the paragraph identified as (2) of the original PCT application, the cooling process starts at a temperature of 32-36°C down to

0-4°C (to prevent for damages of the yeast, as disclosed), within 72 hours. This is followed by further storage/cooling (0-6°C) to inhibit fermentation.

The resulting pre-dough is at least four days old (page 3 of the specification, last line) prior to use in any kind of a bread dough. The inventive pre-dough is storable up to six months, prior to use in a bakery.

In accordance with the invention, no further ferments need to be added to the pre-dough and yeast content of the dough can be reduced 10-30% (see page 5 of the PCT specification).

As discussed below, no such claims can be made by the cited references, either taken alone or in any combination.

Claims 13-18 and 20-29 are rejected under 35 U.S.C. § 103(a) as being obvious over Schou et al. (EP 0 152 943) in view of Barber et al. (1992, Storage of packaged white bread). Applicants herein respectfully traverse these rejections. For a rejection under 35 U.S.C. §103(a) to be sustained, the differences between the features of the combined references and the present invention must be obvious to one skilled in the art.

The cited Schou et al. refers to a bread manufacturing, without any step to inhibit fermentation. Additionally, Schou et al. is silent regarding long time storage of dough, which would necessarily interrupt a continuous process which is disclosed. Thus, applicants respectfully submit that the disclosure of Schou et al. teaches away from such claimed feature. References must be taken in their entireties, including

those portions which argue against obviousness. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 230 USPQ 416, 420 (Fed. Cir. 1986).

The Barber et al. reference fails to supplement this lacking disclosure in the primary reference. Fig. 1 of Barber et al. (page 443) refers to "preparations," mentioned as "ferments," but not to a pre-dough. According to Barber et al., sponge will be stored at 28°C within 60 minutes and stored subsequently at 8°C within 22 hours, also within 2 hours, at 28°C (RS, i.e. refrigerated sponge).

Applicants believe that the Examiner has failed to appreciate the claimed invention which results in a yeast content of the dough which can be reduced 10-30%. Applicants have drawn this conclusion from the statement in paragraph 15 on page 6 of the Office Action of "Sponge ... with relatively high percentages of yeast."

In addition, cooling of yeast/pre-dough to 0-4°C is not suggested by Barber et al., since such cooling would disturb a continuous manufacturing process. In a conventional bread manufacturing process fermentation will be stopped definitely by a temperature, higher than 32°C.

Thus, it is respectfully submitted that the rejected claims are not obvious in view of the cited references for the reasons stated above. Reconsideration of the rejections of claims 13-18 and 20-29 and their allowance are respectfully requested.

Claims 13-18 and 20-29 are rejected under 35 U.S.C. § 103(a) as being obvious over Despre et al. (EP 0 948 904) in view of Barber et al. (1992, Storage of packaged white bread). Applicants herein respectfully traverse these rejections.

Despre et al., including example 2 referred to therein, fails to adequately supplement the deficiencies in Barber et al., as discussed above. In particular, Despre et al. does not refer to a specified and separate pre-dough production process.

Thus, it is respectfully submitted that the rejected claims are not obvious in view of the cited references for the reasons stated above. Reconsideration of the rejections of claims 13-18 and 20-29 and their allowance are respectfully requested.

Claims 13-18 and 20-29 are rejected under 35 U.S.C. § 103(a) as being obvious over Wolt et al. (US 5,433,966) in view of Barber et al. (1992, Storage of packaged white bread). Applicants herein respectfully traverse these rejections.

Applicants respectfully submit that Wolt et al. fails to adequately supplement the deficiencies in Barber et al., as discussed above. In particular, and as admitted in the Office Action in paragraph 34 on page 9 of the Office Action, Wolt et al. “is silent regarding the refrigerated storage of the prepared sponge.”

Thus, it is respectfully submitted that the rejected claims are not obvious in view of the cited references for the reasons stated above. Reconsideration of the rejections of claims 13-18 and 20-29 and their allowance are respectfully requested.

Applicants respectfully request a one (1) month extension of time for responding to the Office Action. Please charge the fee of \$130 for the extension of time to Deposit Account No. 10-1250.

The USPTO is hereby authorized to charge any fee(s) or fee(s) deficiency or credit any excess payment to Deposit Account No. 10-1250.

In light of the foregoing, the application is now believed to be in proper form for allowance of all claims and notice to that effect is earnestly solicited.

Respectfully submitted,  
JORDAN AND HAMBURG LLP

By Frank J. Jordan by:  
Frank J. Jordan  
Reg. No. 20,456  
Attorney for Applicants  
and,

By Lawrence I. Wechsler  
Lawrence I. Wechsler  
Reg. No. 36,049  
Attorney for Applicants

Jordan and Hamburg LLP  
122 East 42nd Street  
New York, New York 10168  
(212) 986-2340

enc: Form PTO-2038.